



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

John Lee, Chairman
Susanne Murphy, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Rick Merrikin, Member
Drew Delaney, Assoc Member

DECISION – BOARD OF APPEALS CASE NO. 21-19

APPLICANT:

PALAZA LIMITED PARTNERSHIP

SITE:

**2181 Providence Highway
Assessor's Lot No. 54-49**

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The grant of a SPECIAL PERMIT under Sections 9(3)A and 9(3)C of the Zoning Bylaw for the alteration, expansion or extension of a nonconforming use as shown on the following plans: (1) "Assessor Parcel 54-49", prepared by Legacy Engineering, dated September 9, 2019, as may be amended; and (2) "Monopole Sign Structure," prepared by GRC Engineering, Inc., dated June 13, 2019 and revised through July 15, 2019, as may be amended (collectively, the "Plans")

On October 16, 2019 a Public Hearing was held, in the Main Meeting Room of Town Hall, for the purpose of receiving information and voting upon a decision as to granting of the Special Permit requested. The members who were present and voting:

John Lee, Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Drew Delaney, Assoc. Member

VOTE OF THE BOARD:

A motion was made by Mary Jane Coffey and seconded by Robert Fitzgerald, that the Board grant PALAZA LIMITED PARTNERSHIP a Special Permit under Sections 9(3)A and 9(3)C of the Zoning Bylaw for the alteration, expansion or extension of a nonconforming use as shown on the Plans.

The vote was 4-0-0 in favor; therefore, the Special Permit under Sections 9(3)A and 9(3)C is hereby granted subject to the following conditions:

135 School Street, Walpole, MA 02081

1. The proposed billboard shall be lighted only between the hours of dusk and midnight;
2. Upon the request of the Town of Walpole and to the extent feasible, the Applicant shall enter into an agreement with the Town to allow the Walpole Police Department and/or Walpole Fire Department to mount public safety communications equipment on the proposed billboard without the payment of rent, provided that said mounting of public safety equipment shall be at no cost, expense or liability to the Applicant;
3. The Applicant shall return to the Board to revise the Special Permit in the event it desires to convert the static billboard to an electronic or digital format; and
4. The Applicant shall receive all required approvals from the Massachusetts Department of Transportation (MassDOT) prior to the issuance of a building permit for the construction of the billboard.

REASONS FOR DECISION

The Site is currently occupied by a static, "I-Beam" style, two-sided freestanding sign with four legs and a sign surface area of 672 sf +/- (the "Existing Billboard"), and the Applicant proposes to demolish the Existing Billboard and replace it with a new freestanding billboard (the "Proposed Billboard"), all as shown on the Plans. It is the finding of the Board that the Application meets the requirements under Sections 9(3)A and 9(3)C of the Zoning Bylaw to allow the alteration, expansion or extension of a nonconforming use in the Highway Business District. The Board finds that the Applicant properly applied for all relief necessary for the Proposed Billboard in accordance with the Zoning By-Laws. The Board finds that the Proposed Billboard is in character with and follows the intent of the Highway Business District. Accordingly, the Board has determined that the Special Permit requested is warranted.

FURTHER FINDINGS

1. Section 9: Non-Conforming Situations, 3. Nonconforming Uses, A. Finding and Determination required that:

A nonconforming use may be continued to the same degree and for the same purpose but may be altered or extended only with a special permit from the Board of Appeals in accordance with the provisions of Section 2.2, provided further that the Board finds such alteration, expansion or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use.

(Section 2.2): Prior to granting a Special Permit, the [Board] shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

The section of the Bylaw which refers to the granting of the requested special permit is Section 9(3)(A). The criteria specific to said section is a finding from the Board that the alteration, expansion or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use. The Board finds that the Existing Billboard is rusted and dilapidated, and consists of an outdated, four-beam design. The Proposed Billboard will have a sleeker, less-intrusive monopole design. In addition, the Proposed Billboard will be taller than the Existing Billboard, which will result in it being less visible to the immediate neighbors, but it will remain below the tree-line and thus will not increase impact to more distant neighbors. Otherwise, the size and style of the Proposed Billboard will be exactly the same as the Existing Billboard. Therefore, the Board finds that the Proposed Billboard will not be substantially more detrimental to the neighborhood than the Existing Billboard.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Proposed Billboard shall not generate vehicular and/or pedestrian traffic, other than routine maintenance visits, and as such the Board finds that this condition is satisfied.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The Proposed Billboard shall not have any residents, employees or customers. Visitors shall be limited to periodic maintenance and billboard advertisement changes, which will not adversely affect the immediate neighborhood given that the billboard lies among commercial uses in a Highway Business Zone. As such, the Board finds that this condition is satisfied.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Proposed Billboard location will be more than 10 feet from the right-of-way of Route One, therefore meeting setbacks applicable to freestanding signs. The Proposed Billboard will be more than eight feet from ground level, therefore meeting height requirements applicable to freestanding signs. Moreover, the Proposed Billboard will be 45 feet high, therefore meeting the overall height restriction in the Highway Business District. There will be no increase in Site coverage, nor are any buffering requirements of Section 5-G applicable. As such, the Board finds that this condition is satisfied.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

Billboards are not generally known to be associated with fire, explosion, emission of waste or other similar incidents. As such, the Board finds that this condition is satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

Billboards are not generally known to be associated with noise, vibration, dust, heat, smoke, fumes, odor, excessive glare or other nuisance or serious hazard. As such, the Board finds that this condition is satisfied.

(g) shall not adversely affect the character of the immediate neighborhood; and

The Proposed Billboard will replace a billboard of the same size which already exists at the Site. The Existing Billboard is rusted and dilapidated, and is constructed of a more visually obtrusive, four-leg design, and thus the Proposed Billboard will be an improvement to the neighborhood. Although the Proposed Billboard will be taller than the Existing Billboard, the increased height will result in a reduced visual impact to the immediate neighbors, while still remaining below the tree-line with respect to its visual impact to more distant neighbors. Finally, there are several other billboards located on Route One in Walpole. As such, the Board finds that this condition is satisfied.

(h) shall not be incompatible with the purpose of the Zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Proposed Billboard will be located in the Highway Business District. The purpose of the HBD is to provide for retail, office, research and development, assembly, and manufacturing uses related to said uses consistent with uses along a major regional highway, and all related accessory uses. As such, the Board finds that a billboard is a compatible use within the Highway Business District.

2. Section 9: Non-Conforming Situations, 3. Nonconforming Uses, B. Finding and Determination required that:

Alteration, extension or expansion of a nonconforming use shall only be allowed by special permit if the alteration, extension or expansion does not increase the total of all floor area plus open ground area of the premises devoted to the use by more than fifty (50) percent.

The Proposed Billboard will not result in any increase of the total floor area plus open ground area of the premises. The Proposed Billboard will not result in any increase of the surface area of the sign. The increase in height, while resulting in a vertical extension of the Existing Billboard, is consistent with the maximum height allowed within the HBD. As such, the Board finds that the Proposed Billboard meets the requirements pursuant to Section 9(3)(B) for alteration, extension or expansion of a nonconforming use.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

cc: Town Clerk Applicant Building Inspector

This decision was made on October 16, 2019 and filed with the Town Clerk on October 28, 2019.

135 School Street, Walpole, MA 02081